

Appeal from decision of the Boise District Office, Bureau of Land Management, rejecting desert land application I-5077.

Reversed and remanded.

1. Applications and Entries: Generally -- Desert Land Entry:  
Applications

The failure of a desert land entry applicant to promptly notify the Bureau of Land Management of a change of address does not, in itself, constitute an adequate basis for rejecting the application.

APPEARANCES: Marlin G. Tullis, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Marlin G. Tullis appeals from a decision of the Boise District Office, Bureau of Land Management (BLM), dated February 17, 1984, rejecting his desert land application, I-5077.

In his desert land entry application filed May 11, 1972, appellant sought 320 acres of land located in the E 1/2 SE 1/4 sec. 33 and the S 1/2 SE 1/4, SW 1/4 sec. 34, T. 3 S., R. 1 E., Boise Meridian, Idaho.

On August 18, 1983, BLM sent appellant a letter by certified mail in which BLM requested appellant to submit certain information relating to his desert land application. The letter was mailed to appellant's address of record, but was returned to BLM by the postal service marked "Unclaimed."

By decision of January 12, 1984, BLM informed appellant that applicants for a desert land entry must promptly notify BLM upon changing their post office addresses, as required by 43 CFR 2521.2(b). BLM advised appellant that its letter of August 18, 1983, had been returned and, further, required appellant to notify BLM of a current post office address within 15 days of receipt of the decision. BLM stated that failure to submit the required information within the time allowed would result in rejection of

the application. This decision was also sent by certified mail to appellant's address of record and returned to BLM marked "Unclaimed." <sup>1/</sup>

BLM's subsequent decision of February 17, 1984, rejecting appellant's application, stated in pertinent part:

On January 12, 1984, a decision was issued from this office requiring you to advise us of your current post office address. You were given 15 days in which to furnish us your address so that we could communicate with you concerning your desert land application, I-5077. You did not comply.

Your application is hereby rejected.

Appellant received this decision mailed to his address of record and timely filed a notice of appeal.

In his statement of reasons appellant asserts that he did not receive BLM's request in January asking for his "updated" address. Appellant asserts that the address to which BLM sent both its January request and its decision of February 17, 1984, is, in fact, his current address and has been for several years.

A review of the file reveals that appellant's address of record with BLM is appellant's current address.

BLM rejected appellant's application for failure to furnish a current address. The applicable regulation, 43 CFR 2521.2(b), relating to applications for desert land entries, provides, in relevant part: "It is especially important to claimants that upon changing their post-office addresses they promptly notify the authorizing officer of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them."

The BLM District Office obviously read this regulation as providing a substantive basis for rejection of an application for a desert land entry. This is not the case. This Board has held that rather than being a proscriptive regulation which authorizes imposition of a specified penalty for failure of an applicant to perform a specific act, this regulation is in the nature of a warning, advising the applicant that, should he fail to keep BLM advised of his current address, the application may be rejected for a substantive reason and the applicant may not be timely notified, with the result that the right of appeal will be lost. The regulation does not provide an independent basis for rejection of a desert land entry application. Keith L. McCann, Jr., 81 IBLA 314 (1984). A fortiori, this regulation will not support rejection of the application where, as in this case, the applicant has in fact kept BLM informed of his current address of record.

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<sup>1/</sup> Appellant's address of record is 13040 Desert View Drive, Rt. 2, Kuna, Idaho 83634. We note that BLM failed to include "Rt. 2" when addressing the envelope containing the decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Wm. Philip Horton  
Chief Administrative Judge

